

Vapor Intrusion Legal Issues

Lawrence Schnapf

Schulte Roth & Zabel

919 Third Avenue

New York, New York 10022

212-756-2205 (phone)

212-593-5955 (fax)

lawrence.schnapf@srz.com

VI Sites In the News

- Endicott, NY
- Victor, NY
- Hopewell Junction, NY
- Hillcrest, NY
- Ithaca, NY
- Vestal, NY
- Union, NY
- Norwich, NY
- Cortland, NY
- Plainview-Old Bethpage, NY
- Ford Edward, NY

VI Sites in the News

- Napa, CA
- Simi Valley, CA
- Gardena Marketplace , CA
- American Beryllium Televast, Fl
- Douglas, MI
- St. Louis Park, MN
- Lockwood, MT
- Omaha, NE
- Behr Dayton, OH
- Copley, OH
- San Antonio, TX

Notable VI Litigation

- U.S. v. Apex (S.D. Ill. 7/2008)
- Grace Christian Fellowship v. KJG Investments (E.D. WI 2008)
- Spear v. Chrysler LLC (S.D. Ohio 2008)
- Bonds v. Nicoletti Oil (E.D. CA 2008)
- Sher v. Raytheon (M.D. FL. 2008)
- State of Maryland v. US Army (D. Md. 2008)
- Blain v. IBM (Broome Cty, NY 2008)

Notable Litigation

- Rochester Technology Park (NY VCA)(2007)
- Ball v. Bayard Pump & Tank Co. (PA 2007)
- Avx v. Horry Land (S.C. 2007)
- New York State v. Exxon (E.D.N.Y. 2007)
- Muniz v. Rexnord (N.D. IL 2007)
- Martin v. Foster Wheeler (MD PA 12/2007)
- Carson Coalition v. City of Carson (Ca. App. 2007)

Notable Litigation Cont'd

- Baumbach v. ExxonMobil (NY 2006)
- Nnadili v. Chevron (DC 2006)
- Ohio Casualty v. Reed (S.D. Ind. 2006)
- Acton v. Simon Wrecking (E.D. Pa. 2006)
- Defense Logistics Agency v. Pa (EHB 2001)
- Antolovich v. Brown Group Retail, Inc. (Co.2000)

Regulatory Review

- Bally Groundwater Site Removal AOC
- McAdoo Associates Site
- York County Solid Waste and Refuse Authority Landfill
- Nyanza Chemical Waste Dump (Ashland, MA)
- Raymark Industries (Stratford, Ct)
- Kellogg-Deering Wellfield (Norwalk, Ct)

Liability for Vapor Intrusion

- CERCLA (RI, RD/RA, 5-YR Reviews)
- RCRA Corrective Action (EI/HE)
- UST
- State Remedial Programs
- Common Law

OFF-SITE MIGRATION

- Driving Listing and Re-opening Decisions
- Leading Cause of Litigation

OFF-SITE MIGRATION- Regulatory

- McAdoo Associates Site
- York County Solid Waste and Refuse Authority Landfill
- Behr Dayton Ohio

Off-Site Litigation

- Spear v. Chrysler LLC
- First Property Group, Ltd v. Behr Dayton Thermal Products LLC
- Martin v. Behr Dayton Thermal Products LLC
- Sher v. Raytheon

Environmental Quality Review Litigation

- Citizens for Upholding Zoning Regs v. City of Palo Alto
- Bronx Committee for Toxic Free Schools v. NYSCA

Primary Jurisdiction

- Sher v. Raytheon
- Spear v. Chrysler

Lease Liability

- Doherty v. Karten (NY)(reservation of re-entry)

CERCLA

- Exclusion for Releases:
 - Exposures to persons solely in workplace
 - for claims asserted against employer (workers compensation?)
- Facility- where hazardous substances come to rest
- Unilateral Administrative Orders
- Cost Recovery

CERCLA Continued

- Owner of Property
 - Equipment/Vessels
 - stormwater and sewer lines
- Operators-
 - tenants
- Generators-
 - franchisors/equipment manufacturers

CERCLA Continued

- Third Party Defense
 - Due Care Element
 - Precautionary Element
- ILO, BFPP and CPO
 - appropriate care

RCRA

- Corrective Action 3004 (u) and (v)
- Closure (TSDF and Generator)
- Section 3013 AO
- Section 7002
- Section 7003
- Section 3008(h)
- Sub-title I (USTs)

State Common Law

- Nuisance
- Trespass
- Strict Liability
- PI/PD
- Professional Malpractice
- Negligent Misrepresentation
- Breach of Contract (Lease, Sale)